

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEON BLATT,

Plaintiff,

v.

PETE SHOVE, et al.,

Defendants.

CASE NO. C11-1711RAJ

ORDER

I. INTRODUCTION

This matter comes before the court on Defendants' motion for summary judgment. No party requested oral argument, and the court finds oral argument unnecessary. For the reasons stated herein, the court GRANTS the motion in part and DENIES it in part. Dkt. # 125. The court dismisses all claims against all Defendants with two exceptions: Plaintiff may proceed to trial on his claim that six Marysville Police officers arrested him without probable cause in violation of the Fourth Amendment and his claim that the officers arrested him in retaliation for exercising his First Amendment rights.

The court DENIES Plaintiff's motion to extend the discovery period. Dkt. # 132. Discovery in this matter is closed. Trial will begin on December 8, 2014.

The clerk shall TERMINATE Defendants Adam Vermeulen, John Doe Gehlsen, and Fred L. Gillings as parties. There are no claims remaining against them.

II. BACKGROUND & ANALYSIS

A. The Court Grants Summary Judgment Against All of Mr. Blatt's Remaining Claims, with Two Exceptions.

In its February 7, 2014 order, the court held that that the only claims that remain in this action are Plaintiff Leon Blatt's claims invoking 42 U.S.C. § 1983 and § 1985 against seven Marysville police officers and one Marysville judge.¹ Section 1983 permits a suit against a defendant acting under color of state law who has violated a plaintiff's rights guaranteed by the United States Constitution or other federal laws. Section 1985 creates liability for certain conspiracies between state actors.

In their summary judgment motion, Defendants have attempted to decipher Mr. Blatt's operative complaint to determine what § 1983 and § 1985 claims Mr. Blatt has attempted to state. As the court has noted before, that complaint is a confounding jumble of hard-to-follow and error-strewn allegations, along with a host of irrelevant material. Feb. 7, 2014 ord. (Dkt. # 119) at 4-5; Mar. 1, 2013 ord. (Dkt. # 82) at 1-2. The court concludes that Defendants did as well as could be expected in identifying those claims, and said enough about them in their summary judgment motion to obligate Mr. Blatt to either support those claims or clarify which claims he intended to bring.

With two exceptions, which the court will soon discuss, Mr. Blatt's § 1983 and § 1985 claims fail because of fatal legal flaws as well as the lack of any evidence to support them. Mr. Blatt neither states a claim nor provides evidence to support a claim that anyone deprived him of rights guaranteed by the Equal Protection Clause or Due Process Clause of the Fourteenth Amendment. He has no standing to assert a claim based on any police officer's or other official's failure to investigate an alleged violation of a domestic violence no-contact order involving Mr. Blatt's landlord and a woman. Mr. Blatt's assertion that anyone conspired to prevent him from testifying in a court

¹ Defendants correctly note that the February 7 order erroneously stated that claims against "two judges" survived. The court did not notice that Mr. Blatt's second amended complaint, unlike his original complaint, did not purport to state a claim against "pro tem Gehlsen." Mr. Blatt has confirmed that he deliberately chose not to sue pro tem Gehlsen in his second amended complaint. Blatt Decl. (Dkt. # 128-1) ¶ 50 n.1.

proceeding related to any allegation of domestic violence lacks evidentiary support. As to his attempt to state a claim against the judge, he has offered neither evidence nor allegation sufficient to overcome the absolute immunity afforded to judges for their judicial acts.²

The court dismisses each of the foregoing claims with prejudice, and to the extent that Mr. Blatt believes that he has one or more other claims hidden in his operative complaint that the court has not addressed in this order or in its prior orders, the court rules that he has abandoned those claims by failing to state them with sufficient clarity or to take any other actions that would put anyone on notice that he is pursuing those claims.

B. Mr. Blatt's False Arrest and Retaliatory Arrest Claims May Proceed to Trial.

What remains of this case are two related claims that arise from an incident in Marysville at around 1:00 a.m. on October 13, 2008. The court considers those claims on a motion for summary judgment, and therefore applies the familiar summary judgment standard, which requires it to draw all inferences from the admissible evidence in the light most favorable to the non-moving party. *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.

² The court's disposition today makes it unnecessary to address Mr. Blatt's "surresponse," which he filed without notice in violation of Local Rules W.D. Wash. LCR 7(g). In that document, he "challenge[s]" the court to point out where he "ever alleged" that the actions of the judge and others caused him to be "continuously confined for the two months" following his arrest. The "continuously confined" assertion appears on page 12 of the court's February 7, 2014 order, where the court pointed out that the allegations of Mr. Blatt's operative complaint were inconsistent. As an example, the court noted that he both contended that he was "continuously confined" for the two months following his arrest and that he was released after just eleven days. Because Mr. Blatt asserts that this comment was an instance in which the court "insulted" him, the court recounts some of the allegations supporting it. In Mr. Blatt's second amended complaint, he asserts that "[f]or an aggregate of 60 days [he] had no law library access, no case file, no way to know the statute or ordinance or court rules," and so he "filed a writ of habeas corpus." ¶ 7.90. Because Mr. Blatt's complaint contains two paragraphs numbered 7.90, the court clarifies that it refers to the one on page 20 of his 74-page complaint, not the one on page 26. Mr. Blatt also asserted, in the same complaint, that he was "abducted and held for weeks and months at a time," ¶ 8.4, that he was allowed to "languish in administrative detention for months without counsel," ¶ 9.116 (p.70, not p.55), and that the judge "jail[ed] him for 75 days," ¶ 9.98 (p.67, not p.52). Mr. Blatt initiated this case with a complaint that twice asserted that the judge "held [him] in jail for two months before discharging [him]." Dkt. # 4 at 2, 4.

1 Fed. R. Civ. P. 56(a). The moving party must initially show the absence of a genuine
2 issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The opposing
3 party must then show a genuine issue of fact for trial. *Matsushita Elect. Indus. Co. v.*
4 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must present
5 probative evidence to support its claim or defense. *Intel Corp. v. Hartford Accident &*
6 *Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). The court defers to neither party in
7 resolving purely legal questions. *See Bendixen v. Standard Ins. Co.*, 185 F.3d 939, 942
8 (9th Cir. 1999).

9 According to Mr. Blatt, a woman came to him on that October night to complain
10 that Mr. Blatt's landlord was "holding her in violation of a No Contact Order and was
11 beating her." Blatt Decl. (Dkt. # 128-1) ¶ 8. Mr. Blatt advised the woman to run away
12 from his landlord, but she declined. Later that night, Mr. Blatt's landlord, apparently
13 upset that the woman had come to Mr. Blatt, confronted him with a knife, cut his
14 fingertip, chased him down a road, and tackled him. Mr. Blatt escaped and ran to a house
15 and knocked on the door. *Id.* ¶ 12. A girl answered the door, and Mr. Blatt asked her to
16 call 911. The girl went inside, came back to the door at least once, and her mother
17 eventually told her to close the door. Mr. Blatt remained on the front porch of the house.
18 While he waited, he answered one or more cellular phone calls from the woman who had
19 spoken to him earlier about his landlord. *Id.* ¶ 15.

20 Eventually, the Marysville Police arrived. The parties' accounts of subsequent
21 events differ sharply. To begin, Mr. Blatt insists that *six* police officers arrived and later
22 surrounded him, Blatt Decl. ¶¶ 17, 19, whereas Defendants contend that only three
23 officers were at the scene, and at most two of them interacted with Mr. Blatt. Mr. Blatt
24 does not name any of the officers at the scene, with the exception of Officer Pete Shove.
25 The court can be certain that Officer Shove was at the scene, because he filed a police
26 report revealing as much. Officer Shove's report (which is the only evidence from
27 Officer Shove) makes no mention of any other officer at the scene. But the court can be

1 certain that Officer Adam Vermeulen was at the scene, because he provided a declaration
2 stating that he arrived at the scene and discovered that Officer Shove had already arrested
3 Mr. Blatt and the “scene was under control.” Vermeulen Decl. (Dkt. # 126) ¶ 5.
4 Sergeant Jeffrey Franzen was apparently at the scene as well, because Officer Vermeulen
5 obliquely acknowledges his presence. *Id.* ¶ 6. Officer Vermeulen declares that he did not
6 leave his patrol vehicle, and that he had no contact at all with Mr. Blatt. *Id.* Mr. Blatt
7 offers no evidence to dispute Officer Vermeulen’s account, and the court therefore
8 accepts it as true.

9 Which other officers were at the scene that night? The court knows that just eight
10 Marysville police officers were on duty, because Marysville provided that information to
11 Mr. Blatt in response to a public records request, and he has not challenged the accuracy
12 of that response. Mr. Blatt sued seven of those officers, but with the exception of Mr.
13 Shove, he provides no evidence at all that is specific to any one of them. Because Officer
14 Vermeulen never left his car, the court must take the inference that the six officers who
15 “surrounded” Mr. Blatt (Blatt Decl. ¶ 19) were the six other officers he sued: Officer
16 Shove, Sergeant Franzen, and Officers Craig Dockstader, Jeremy King, Brian Lutschg,
17 and Todd Fast. Defendants contend that the latter four officers were not at the scene.
18 Defendants’ evidence in support of that assertion is weak at best, but the court could not
19 credit it even if it were stronger. On summary judgment, the court is compelled to accept
20 Mr. Blatt’s declaration that he was surrounded by six officers, and must infer that they
21 were the six officers (other than Officer Vermeulen) whom he sued.

22 Defendants attempt to rely on two computer-aided dispatch reports as evidence.
23 According to Defendants’ counsel, the CAD reports reflect 911 calls from the owner of
24 the home whose door Mr. Blatt knocked on that night as well as a neighbor who heard
25 Mr. Blatt. The CAD reports contain notations relaying some of the substance of each
26 caller’s report, and they contain notations suggesting that Officer Shove, Sergeant
27 Franzen, and Officer Vermeulen responded to the call. According to Defendants, the

1 reports are admissible evidence both of what the officers knew about the situation before
2 they arrived and evidence that Officers Dockstader, King, Lutschg, and Fast were not
3 involved. But Defendants are mistaken, because they have submitted no evidence that
4 establishes either that the CAD reports reflect what the officers knew when they arrived
5 at the scene or that the absence of four officers' names from the CAD reports means that
6 they were not at the scene.³ There is no evidence in the record that comes directly from
7 any officer other than Officer Shove and Officer Vermeulen.

8 The only evidence that sheds light on what the officers knew when they arrived at
9 the scene is Officer Shove's report. There, he asserts that he was dispatched to "a report
10 of a male on the porch of [a Marysville residence] screaming for help, pounding on the
11 door, and yelling that he was a police officer and demanding the residents open the door
12 for him." Culumber Decl. (Dkt. # 127), Ex. 3. He also asserts that "our agency" received
13 two calls, one from the homeowner and another from the neighbor. *Id.* He explained that
14 the callers had described the person as a white male in his forties with light colored hair
15 wearing a dark colored coat and jeans. *Id.* Both callers asserted that the person was
16 "screaming that someone was chasing him," although they could not see anyone else. *Id.*
17 He asserts that the homeowner stated that the man was yelling "Police, open up!" *Id.*
18 Mr. Blatt offers no evidence to dispute Officer Shove's account of what he knew when he
19 arrived at the scene. He contends that he was not screaming and that he did not claim to
20 be a police officer when he knocked (not pounded or banged) on the door. Blatt Decl.
21 (Dkt. # 128-1) ¶¶ 24-30. He admits, however, that he may have made statements when
22 talking on his cellular phone while on the front porch that could have been interpreted as
23 statements about the police. *Id.* ¶ 15. In any event, Mr. Blatt has no evidence as to what
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25 ³ Mr. Blatt used much of his opposition to the summary judgment motion to demand that the
26 court strike the CAD reports. He correctly noted that Defendants laid no foundation to admit the
27 CAD reports as business records. The court does not rely on the CAD reports in its decision
28 today, although it notes that its decision would be no different even if it had relied on them. In
light of the court's disposition, it need not resolve Mr. Blatt's evidentiary objections to the CAD
reports or to any other piece of evidence.

1 the callers said when the called 911 or what information 911 relayed to Officer Shove.
2 The court accordingly accepts as true Officer Shove's account of what he knew when he
3 arrived at the scene.

4 Mr. Blatt claims that when the six officers arrived at the scene, he left the porch to
5 walk to the street to meet them. Blatt Decl. (Dkt. # 128-1) ¶ 17. One officer, who Mr.
6 Blatt does not identify, interrupted Mr. Blatt as he began to explain himself, and stated as
7 follows:

8 Hey, I recognize you. You're that constitutionalist. Nu-uh. We're not
9 going to take your report. If you don't have to follow the rules, we don't
have to follow the rules.

10 *Id.* ¶ 18. After that, the officers surrounded him. He explained that the woman was
11 "being held" by his landlord just a few blocks away. *Id.* ¶ 20. He told the officers his
12 landlord's name and address. *Id.* ¶ 33. The officers stated that they had arrested the
13 landlord many times, "mostly for violence against women." *Id.* ¶ 20. During the
14 conversation, Mr. Blatt's cellular phone rang repeatedly. *Id.* ¶ 23. An unidentified
15 officer asked him why he had not used his cellular phone to call 911, as opposed to
16 asking the homeowner to do it. *Id.* Mr. Blatt responded: "Have you ever tried calling
17 911 while running down a dark gravel road with a knife-wielding man chasing you?" *Id.*
18 An unidentified officer told Mr. Blatt to "turn around and repeat the story to my
19 sergeant." *Id.* ¶ 21. When Mr. Blatt did so, an officer "grabbed [his] hands from behind
20 and cuffed them." *Id.*

21 No one disputes that Mr. Blatt's initial arrest was for disorderly conduct, a
22 misdemeanor Washington offense. RCW 9A.84.030. In this § 1983 action, that arrest
23 was unlawful only it violated the Fourth Amendment.⁴ A § 1983 unlawful arrest claim
24 requires the plaintiff to prove a lack of probable cause. *Norse v. City of Santa Cruz*, 629

25 ⁴ To the extent that Mr. Blatt argues that the arrest was unlawful because it did not comply with
26 state law prohibiting arrest for certain misdemeanors, that argument is irrelevant to his § 1983
27 claim, which requires him to demonstrate a violation of the Fourth Amendment. *See Virginia v.*
Moore, 553 U.S. 164, 171 (2008) (holding that warrantless arrest in violation of state law did not
violate Fourth Amendment).

1 F.3d 966, 978 (9th Cir. 2010); *Cabrera v. City of Huntington Park*, 159 F.3d 374, 380
2 (9th Cir. 1998). Probable cause is a determination that “the facts and circumstances
3 within [the arresting officer’s] knowledge are sufficient for a reasonably prudent person
4 to believe that the suspect has committed a crime.” *Rosenbaum v. Washoe County*, 663
5 F.3d 1071, 1076 (9th Cir. 2011).

6 Accepting Mr. Blatt’s account as true, which the court is required to do, the
7 officers had no probable cause to arrest him for any crime. Although the facts known to
8 the officers when they arrived were perhaps suspicious, Mr. Blatt explained that he had
9 come to the front porch because he was fleeing his landlord, who had a knife. He told the
10 officers where to find his landlord. There is no evidence that the officers attempted to
11 contact either the homeowner or the neighbor who had called 911 to report Mr. Blatt’s
12 behavior. Accepting Mr. Blatt’s version of events, police had no reason to believe he had
13 committed a crime.

14 Officer Shove offers an account of events that, if a jury accepts it as true, may
15 establish probable cause to arrest. According to Officer Shove’s report, he approached
16 the “male subject,” who “matched the description given by the callers,” and “asked him
17 what was going on.” Culumber Decl. (Dkt. # 126), Ex. 3. Mr. Blatt stated that he was
18 being chased by someone named “Tom,” that “Tom” was trying to kill him, and that
19 “they were in some type of dispute related to a barbershop that ‘Tom’ owned in Lake
20 Stevens.” *Id.* But when Officer Shove asked Mr. Blatt where “Tom” was, Mr. Blatt only
21 stated that he did not know. *Id.* Mr. Blatt gave “rambling” answers to Officer Shove’s
22 questions that “at times did not make sense.” *Id.* For those reasons, Officer Shove
23 asserts, he arrested Mr. Blatt for disorderly conduct. The court need not decide whether
24 these facts that Officer Shove asserts would establish probable cause, because the court
25 cannot accept those facts on summary judgment where Mr. Blatt has offered directly
26 contradictory evidence. A jury must decide Mr. Blatt’s claim that the officers arrested
27 him in violation of the Fourth Amendment.

1 A jury must also decide Mr. Blatt's closely-related claim that the officers arrested
 2 him in retaliation for his exercise of his First Amendment rights. He can prevail on that
 3 claim only if he prevails in proving that the police lacked probable cause, because neither
 4 the Ninth Circuit nor the Supreme Court has recognized a "First Amendment right to be
 5 free from a retaliatory arrest that is otherwise supported by probable cause." *Acosta v.*
 6 *City of Costa Mesa*, 718 F.3d 800, 825 (9th Cir. 2013). Assuming he proves a lack of
 7 probable cause, he can prove his § 1983 retaliatory arrest claim by proving that the
 8 officers' "desire to chill his speech" or other exercise of his First Amendment rights "was
 9 a but-for cause" of their unlawful arrest. *Ford v. City of Yakima*, 706 F.3d 1188, 1193
 10 (9th Cir. 2013).

11 Mr. Blatt's evidence permits the inference that the officers arrested him not
 12 because they suspected him of committing a crime, but because he had previously
 13 expressed "constitutionalist" views. Mr. Blatt believes that the officers ascribed those
 14 views to him as a result of an incident during the prior summer in which police,
 15 responding to his landlord's complaint of embezzlement from a barbershop that he
 16 owned, attempted to obtain identification from people at the barbershop, including Mr.
 17 Blatt. Blatt Decl. (Dkt. # 128-1) ¶¶ 3-7. Mr. Blatt refused to provide identification, and
 18 advised the other people in the barbershop to do the same. *Id.* ¶¶ 4-6. As the officers
 19 (who Mr. Blatt does not identify) left the barbershop, one of them said: "What are you,
 20 some kind of constitutionalist?" *Id.* ¶ 7. Mr. Blatt offers no evidence, other than the use
 21 of the word "constitutionalist," to connect the events in the barbershop to his arrest in
 22 October 2008.⁵ Regardless of what (if anything) the officers knew about the "barbershop
 23 incident," Mr. Blatt's evidence that the officers identified him as a "constitutionalist" at
 24 the outset of their encounter on October 13 is sufficient to permit the inference that his
 25 "constitutionalist" views motivated the conduct of the police on October 13. If he can

26 ⁵ Defendants' counsel decries Mr. Blatt's "continuous[] reference[s]" to the "barber shop
 27 incident," and insists that "Defendants have no idea what he is talking about." Defs.' Reply
 28 (Dkt. # 130) at 4 n.3. Counsel submitted no evidence from his clients to support that assertion.

1 prove that at trial, he will establish a violation of the First Amendment. The court has no
2 idea what a “constitutionalist” is, but if officers used the term to refer to Mr. Blatt that
3 night, a jury could reasonably infer that the term is a shorthand for beliefs Mr. Blatt had
4 asserted about his constitutional rights.

5 This case will proceed to trial solely on Mr. Blatt’s § 1983 claims against the
6 police officers asserting violations of his Fourth and First Amendment rights, and solely
7 to the extent that those claims are based on his arrest on October 13. The court dismisses
8 all claims against Officer Vermeulen, because Mr. Blatt has not contradicted evidence
9 that Mr. Vermeulen had no role in his arrest. Claims against the six remaining officers
10 will proceed to trial.

11 **C. The Court Will Not Extend Discovery.**

12 As the foregoing discussion suggests, the evidence the parties submitted in
13 connection with this motion leaves much to be desired. Defendants, however, may have
14 access to the evidence necessary to remedy those shortcomings. For example, they may
15 be able to substantiate their assertion that the CAD reports establish that four of the
16 officers Mr. Blatt has sued did not come to the scene. They may choose to provide, for
17 the first time, evidence from the officers themselves as to whether they were present.

18 Mr. Blatt, on the other hand, is likely to have more difficulty presenting evidence
19 other than his own testimony. He has apparently conducted no discovery. With
20 discovery set to close on August 11, he telephoned counsel for Defendants on August 5
21 and asked to depose all of the police officers on August 11. Defense counsel responded
22 that he was unavailable that day. Mr. Blatt asked instead to depose all of the officers the
23 following day. Defense counsel declined. There is no evidence that Mr. Blatt provided
24 the notices of deposition that Federal Rule of Civil Procedure 32(b) requires.

25 Mr. Blatt’s opposition to the summary judgment motion contained a request,
26 invoking Federal Rule of Civil Procedure 56(d), to delay a ruling while he sought to
27 depose the officers and to obtain more information about the “dispatch of police to his

1 911 call.” But despite having more than two months following his opposition to
2 complete that discovery, he has not done so. In light of the court’s ruling on the
3 summary judgment motion, Mr. Blatt’s Rule 56(d) request is moot.

4 Late on August 7, Mr. Blatt filed a motion to extend the discovery cutoff. He does
5 not request a new discovery deadline, but it appears he wishes to follow through on his
6 recently-announced plan to depose the police officers.

7 Mr. Blatt’s motion is untimely. The court’s scheduling order set an August 11
8 discover deadline, along with a requirement that any “motion related to discovery” be
9 filed so that it was properly noted for the Friday before the close of discovery. Dkt.
10 # 124. Mr. Blatt did not properly note his motion, but if he had, it would have been noted
11 for August 15, the Friday *after* the close of discovery.

12 Putting aside that Mr. Blatt’s motion was untimely, his eleventh-hour request to
13 depose the Defendants is reflective of the last-minute (or after-the-last-minute) approach
14 he has used throughout this case. Mr. Blatt has delayed this proceeding repeatedly, as the
15 court has noted in many prior orders. The court will not reward his lack of diligence by
16 further delaying the resolution of this case.

17 Defendants’ counsel takes no position on Mr. Blatt’s request to modify the
18 discovery deadline. Counsel does so, it appears, because he may intend to request that
19 the court continue the December 8 trial date. The court will not prejudge that request. It
20 observes, however, that counsel has identified conflicts with trial dates that he could have
21 resolved months ago, and that the other trial dates are in cases in which counsel
22 represents defendants who have at least three (and as many as six) other lawyers to
23 defend them. If counsel intends to request a continuance of the long-delayed trial in this
24 case, he will have to provide a much stronger basis for that request.

25 III. CONCLUSION

26 For the reasons previously stated, the court GRANTS Defendants’ summary
27 judgment motion in part and DENIES it in part. Dkt. # 125. The court dismisses all

1 claims against all Defendants with two exceptions: Plaintiff may proceed to trial on his
2 claim that six Marysville Police officers arrested him without probable cause in violation
3 of the Fourth Amendment and his claim that the same officers arrested him in retaliation
4 for his exercise of First Amendment rights.

5 The court DENIES Plaintiff's motion to extend the discovery period. Dkt. # 132.
6 Discovery in this matter is closed. Trial will begin on December 8, 2014.

7 The clerk shall TERMINATE Defendants Adam Vermeulen, John Doe Gehlsen,
8 and Fred L. Gillings as parties.

9 DATED this 18th day of August, 2014.

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13 The Honorable Richard A. Jones
14 United States District Court Judge
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